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6 Counsel for RRFB Global, Inc.

7
UNITED STATES BANKRUPTCY COURT
 8
DISTRICT OF NEVADA

9 In Re:

10 SPOT HOLDINGS, INC.
 11 f/d/b/a SPOT DEVICES, INC.,

12 Debtor.

13 Case No. BK-N-13-51731-BTB

14 Chapter 7

15 **OPPOSITION TO OBJECTION BY
 TRUSTEE TO PROOF OF CLAIM OF
 RRFB GLOBAL, INC.**

16 Hearing Date: May 20, 2014
 17 Hearing Time: 2:00 p.m.
 Est. Hearing: 5 minutes
 Set By: Calendar Clerk

18 RRFB Global Inc. (“RRFB Global”) hereby files its Opposition to the Objection by Trustee
 19 to Proof of Claim of RRFB Global, Inc., filed as Docket No. 33 on April 14, 2014 (“Objection”) on
 20 the grounds that the Objection should not be sustained because: (1) RRFB Global timely filed its
 21 proof of claim based upon damages arising from patent infringement by Debtor Spot Holdings, Inc.
 fdba Spot Devices, Inc. (“Debtor”) and satisfied the requirements of Rule 3001; (2) the Trustee has
 22 failed to rebut the presumption of prima facie validity of RRFB Global’s claim with any evidence;
 23 (3) an evidentiary hearing is required; and (4) RRFB Global needs information and evidence within
 24 Debtor’s and/or the Chapter 7 Trustee’s control in order to precisely calculate its damage claim so
 the Trustee should be estopped from asserting that the claim amount is overstated. This Opposition
 25 is based upon the following points and authorities, RRFB’s proof of claim timely filed on the claim
 26 register on December 26, 2013 as Claim #6, the concurrently-filed declarations of Joel B. Rothman,
 27
 28

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1 Esq. (“Rothman Declaration”) and Richard D. Jones (“Jones Declaration”) and the arguments of
 2 counsel at a hearing on this matter.

3 **POINTS AND AUTHORITIES**

4 1. On August 29, 2013, Debtor filed its voluntary petition under Chapter 7 of the
 5 Bankruptcy Code.

6 2. The proof of claim bar date was December 26, 2013.

7 3. On December 26, 2013, RRFB Global timely filed its proof of claim in the amount
 8 of \$3,658,131 based upon its calculation of lost profits for Debtor’s infringement of RRFB Global’s
 9 patent.

10 4. As set forth in the Jones Declaration, on or about July 17, 2013 prior to the
 11 commencement of this bankruptcy case, RRFB Global filed a lawsuit against Debtor for patent
 12 infringement: *R.D. Jones, Stop Experts, Inc. and RRFB Global, Inc. v. Carmanah Technologies*
 13 *Corp., Carmanah Technologies (US) Corp., and Spot Devices, Inc.*, Case No. 9:13-cv-80695,
 14 pending in the Southern District of Florida (the “Patent Case”). At issue in the Patent Case is
 15 Debtor’s infringement of RRFB’s US Patent No. 8,269,654, which relates to a device known as a
 16 Rectangular Rapid Flashing Beacon (“RRFB”).

17 5. According to Mr. Jones, it has always been RRFB Global’s intention to pursue its
 18 claim in this bankruptcy case.

19 6. RRFB Global’s proof of claim was prepared and submitted by RRFB Global’s prior
 20 counsel in the Patent Case, David Newman, Esq. of the firm of Arnstein & Lehr, LLP, who was
 21 RRFB Global’s authorized agent at that time. As of February 2014, Arnstein & Lehr, LLP filed a
 22 motion to withdraw as counsel in the Patent Case. RRFB Global has new counsel, Schneider
 23 Rothman Intellectual Property Law Group PLLC (“Schneider Rothman”). Joel B. Rothman, Esq.
 24 is now counsel to RRFB Global.

1 7. Under Rule 3001 of the Federal Rules of Bankruptcy Procedure, an unsecured claim
 2 must meet the following criteria: it must (i) be in writing; (ii) substantially conform to Official Form
 3 10; and (iii) be executed by the creditor or the creditor's authorized agent. An additional fourth
 4 requirement applies only if the claim is based on a writing, in which case the original or duplicate
 5 of the writing must be filed with the proof of claim.

6 8. RRFB Global's proof of claim, which is attached as Exhibit A to the Objection,
 7 provides a calculation of the amount of \$3,658,131 along with a copy of the Complaint filed in the
 8 Patent Case. It is in writing, it is on Official Form 10, it is executed by RRFB Global's authorized
 9 agent. It therefore satisfies the requirements of Rule 3001 of the Federal Rules of Bankruptcy
 10 Procedure.

12 9. The Bankruptcy Rules create a presumption of validity for a proof of claim that
 13 complies with Bankruptcy Rule 3001. If a proof of claim enjoys this evidentiary presumption, the
 14 objecting party has the burden of coming forward with evidence to support its objection and rebut
 15 the proof of claim. *Wilson v. Broadband Wireless Int'l Corp. (In re Broadband Wireless Int'l Corp.)*,
 16 295 B.R. 140, 145 (10th Cir. BAP 2003). An objection to a properly filed proof of claim must be
 17 in writing, filed, and served. Fed. R. Bank. P. 3007. To negate the presumption of Bankruptcy Rule
 18 3001, the objecting party must mirror the criteria set forth in Bankruptcy Rule 3001. Just as a
 19 creditor must file with the court a written statement asserting a right to payment as defined in 11
 20 U.S.C. §101(5), must execute the claim by a creditor or its authorized agent, and must attach
 21 appropriate documentation if the claim is based on a writing, a party objecting to a *prima facie* valid
 22 claim must fulfill similar requirements and come forward with probative evidence of equal force
 23 before the Bankruptcy Rule 3001(f) presumption is negated.

26 10. To negate the *prima facie* validity of a claim, an objection must: (1) assert in a writing
 27 filed with the Court that there is some reason the claimant does not have a right to payment; (2) sign
 28

1 the objection; (3) if appropriate, assert that the claim is in fact based on a writing and that the
2 documentation attached to the claim is insufficient; and (4) come forward with some legal reason or
3 some factual evidence to defeat the claim. It is only then that the Bankruptcy Rule 3001(f)
4 presumption can be rebutted.

5 11. The Trustee's Objection is based upon his allegation that the "unsecured claim is
6 significantly overstated, in that the sales of the contested products were only a minor portion of the
7 gross sales of the Debtor, assuming a patent infringement is proved by RRFB, although any
8 purported patent infringement is denied by Debtor." Objection at 1:26-27. However, no declaration
9 or other evidence is provided in support of the Trustee's Objection. Thus, the Objection does not
10 rebut the presumption of prima facie validity of RRFB Global's claim.

12 12. According to Mr. Rothman, who is now counsel for RRFB Global, the calculation of
13 the amount of the proof of claim is reasonable and accurate based upon the lost profits that RRFB
14 Global has asserted against the Debtor in the Patent Case and the information provided in Debtor's
15 Schedule of Financial Affairs ("SOFA").

16 13. According to Mr. Rothman's information, in 2012 and 2013, the Debtor's business
17 was made up 100% of sales of RRFBs that infringed upon RRFB Global's patent. The proof of
18 claim estimates damages based upon \$1,160,288 for sales for the period from September 18, 2012,
19 when RRFB Global's patent was issued, through December 31, 2012, which was pro-rated from the
20 total gross product sales revenue for 2012 reported by Debtor SOFA #1. The proof of claim
21 estimates damages for January 1, 2013 through August 29, 2013 based \$872,008 for total gross
22 product sales revenue as reported by the Debtor in SOFA #1.

23 14. The proof of claim arrives at the amount of \$1,216,377 for RRFB Global's lost profit
24 damages claim based upon the assumption that the Debtor's profits were 60% of its revenue. This
25 is a very conservative estimate because, in general, the Debtor's products were of lower quality than
26

1 those sold by RRFB Global, and RRFB Global itself has a lower cost of goods than 60%. The claim
 2 is also properly based upon the Debtor's profits since RRFB Global would be entitled to lost profits
 3 as its damages under the Patent Act. The proof of claim properly trebles RRFB Global's damages
 4 claim pursuant to the Patent Act based upon the debtor's willful infringement.

5 15. In his Objection, the Trustee claims that "the sales of the contested products were
 6 only a minor portion of the gross sales of the Debtor" without any evidence or support. Objection
 7 at 1:26. Thus, there is a dispute regarding the percentage of Debtor's gross revenues that are
 8 attributable to the products it sold that infringed upon RRFB's patent. The information that RRFB
 9 Global needs to calculate its claim is within Debtor's and/or the Trustee's control. In order to
 10 determine the extent of RRFB Global's damages as a result of the Debtor's infringement, RRFB
 11 Global needs to obtain documents and records from the Debtor and/or the Chapter 7 Trustee showing
 12 the number of infringing products the Debtor sold, the costs of the Debtor's goods, and the profit
 13 earned by the Debtor.

14 16. RRFB Global should not be prejudiced by a denial of its claim because information
 15 exists within the opposing party's control, which has yet to be discovered and produced. RRFB
 16 Global is prepared to move forward quickly with Requests for Production to obtain the information
 17 that it needs to provide a very accurate calculation of its damage claim for lost profits. *See In re*
 18 *Rowell*, 412 B.R. 524 (Bankr. D. Minn. 2009) (holding that creditor could rely upon information
 19 contained in Debtor's schedules, which was uniquely within Debtor's control, when estimating its
 20 value).

21 17. Moreover, as detailed in the Rothman and Jones' Declarations, the change of RRFB
 22 Global's counsel from Arnstein & Lehr to Schneider Rothman impacted the timing of RRFB
 23 Global's response to the Objection. RRFB Global respectfully submits that it was excusable neglect
 24 under Fed. R. Bank. P. 9006(b)(1) and the time frame for its Opposition should be enlarged and the
 25

Opposition should be considered by the Court. Further, undersigned counsel was contacted on Friday, May 16, 2014 and she was retained today and is filing this Opposition today, Monday, May 19, 2014. It is being filed in time for the hearing on Tuesday, May 20, 2014 at 2 p.m.

18. Accordingly, RRFB Global respectfully requests that this Court DENY the Trustee's Objection. The Trustee has failed to rebut the presumption of prima facie validity with evidence in support of the Objection. Moreover, an evidentiary hearing is required. RRFB Global will engage in discovery to obtain the information it needs, including but not limited to, the Debtor's revenues attributable to the infringing product, the number of infringing products the Debtor sold, the costs of the Debtor's goods, and the profits earned by the Debtor, so that RRFB Global may support and/or amend its claim with additional evidence and this Court may conduct an evidentiary hearing.

DATED May 19, 2014.

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/s/ Amy N. Tirre
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CERTIFICATE OF SERVICE

Pursuant to FRBP 7005 and FRCP 5(b), I certify that I am an employee of Law Offices of Amy N. Tirre, that I am over the age of 18 and not a party to the above-referenced case, and that on May 19, 2014 I filed and served the foregoing **OPPOSITION TO OBJECTION BY TRUSTEE TO PROOF OF CLAIM OF RRFB GLOBAL, INC.** as indicated:

X **BY NOTICE OF ELECTRONIC FILING:** through Electronic Case Filing System of the United States Bankruptcy Court, District of Nevada, to the individuals and/or entities at their email addresses as set forth below:

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BY HAND DELIVERY VIA COURIER: by causing hand delivery of the Document listed above via Legal Express to the persons at the addresses set forth below.

X **BY MAIL:** by placing the document listed above in a sealed envelope with Postage thereon fully prepaid in the United States Mail at Reno, Nevada, and addressed as set forth below. I am readily familiar with my office's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on 19 May 2014, with postage thereon fully prepaid in the ordinary course of business.

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DATED May 19, 2014.

/s/ Genevieve DeLucchi
An Employee of Law Offices of Amy N. Tirre